

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF VETERAN AFFAIRS

Erik D. Pakieser, Petitioner

v.

Minnesota Department of
Transportation, Respondent

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
RECOMMENDATION FOR
DISMISSAL**

A prehearing conference was held on October 11, 2011 at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN 55101. Erik D. Pakieser (Petitioner) appeared on his own behalf. The Attorney General having declined to represent the Minnesota Department of Transportation (the Department or Respondent), Mary Skarda, a Labor Relations employee with the Department, appeared on its behalf.

On October 12, 2011, the ALJ issued an Order urging the Department to retain counsel. By a Notice of Appearance dated October 20, 2011, Nadana Perera, Staff Attorney for the Department, noticed his appearance as counsel for the Department.

FINDINGS OF FACT

1. Petitioner is an honorably discharged veteran who served in the U. S. Navy.

2. On July 27, 2011, the Minnesota Department of Veterans Affairs received from the Petitioner a Petition For Relief Under the Minnesota Veterans Preference Act. This matter concerns the effects of the State of Minnesota shutdown (State shutdown) that occurred from July 1, 2011 until July 21, 2011.

3. In accordance with the ALJ's October 12, 2011 Order, the Petitioner filed a legal argument in support of his position in this matter. The ALJ received the Petitioner's argument on October 28, 2011.

4. On November 8, 2011, the Petitioner sent an email to the ALJ informing her that he wished to withdraw his Petition.

5. At the request of the ALJ, the Department sent to the ALJ a written confirmation that it does not object to a dismissal of this matter.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Veterans Affairs have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 197.481.

2. The parties received proper notice in this proceeding and this matter is, therefore, properly before the Administrative Law Judge.

3. Under Minn. Stat. § 14.59, the ALJ may recommend dismissal of a matter based on the agreement of the parties.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Commissioner DISMISS this contested case proceeding without prejudice.

Dated: December 5, 2011

/s/ Linda F. Close

LINDA F. CLOSE
Administrative Law Judge

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Veterans Affairs will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact the Commissioner of Veterans Affairs, Veterans Service Building, Minnesota Department of Veterans Affairs, 20 West 12th Street, Second Floor, St. Paul, Minnesota 55155-2006, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.